IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-393

DETROIT EDISON CO.,

Petitioner,

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, WILLIE STAMPS, ET AL.,

Respondents.

REPLY BRIEF OF DETROIT EDISON IN RESPONSE TO BRIEF OF PLAINTIFFS STAMPS, ATKINSON AND STANFIELD

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In their brief in response to Edison's Petition for Certiorari, private plaintiffs continue their past practice of making irresponsible attacks upon Edison as a substitute for serious analysis. We reply briefly.

I.

Private plaintiffs suggest (Pl. Br. p. 8, fn. 3)* that quotas should be sanctioned by this Court because Edison has been guilty of "evasive tactics" in the implementation of

* "PL. Br." refers to private plaintiffs' answering brief.

the Decree. There is nothing in the record or elsewhere to support these irresponsible allegations, and the facts are directly to the contrary. The fact that private plaintiffs find it necessary to resort to such false accusations in their brief is indicative of the merit of their position.

II.

Equally irresponsible is plaintiffs' charge (Br. p. 9, fn. 5) that "Edison's racial attitudes seem to have blinded it to the aspirations . . . of city residents who may seek to commute to jobs which Edison affords outside the city . . .". It is, in fact, private plaintiffs who ignore the reality that Detroit and its suburbs constitute an integral labor market, with residents of the area freely crossing back and forth across the city line to their places of employment. As stated in our Petition (p. 6), within the Detroit metropolitan area blacks constitute some 18.2% of the population. In the Edison service area as a whole, blacks constitute some 16.2% of the population. Yet, the Decree arbitrarily fixes a 30% hiring quota.

III.

Private plaintiffs' difficulty in attempting to justify a 30% quota is nowhere more apparent than in their attempt to denigrate the only basis advanced by the District Court itself in utilizing the 30% figure. (See Br. pp. 8-9; Edison's Petition for Certiorari, Appendix B, p. 70a, Para. 9). Thus, in addition to suggesting that Edison is blind to the needs of suburban residents (see Point II, *supra*), private plaintiffs also attack the integrity of the census figures upon which they and the District Court relied, together with the suggestion—nowhere supported in the record—that the black population of Detroit will continue to increase (Pl. Br. p. 8, fn. 4), and a statement that a

"larger number of skilled blacks [than whites] are unemployed". There is nothing in the record—nothing whatsoever—which supports these assertions and predictions; and factors such as these were not even adverted to by the District Court as the basis for its decision. The fact that plaintiffs' counsel finds it necessary to go outside the record and to so attack the integrity of the very statistics upon which the Decree was based, suggests recognition that a 30% quota cannot be supported by the record—much less a 50% or 60% quota.

IV.

In their attempt to justify the use of quotas, private plaintiffs argue that quotas are the class action equivalent of an order in an individual action restoring a plaintiff to the position he would have been in but for discrimination (Pl. Br. pp. 4-6).

The proposition is entirely fallacious: if a more-qualified black applicant for employment (or an employee) is denied employment (or advancement), an order directing that such an individual be given the position which he was previously denied does nothing more or less than place him in the situation he would have been in but for the discrimination. By the same token, such an order places the less-qualified white applicant for employment (or employee) in the place he would have been in but for the discrimination. The use of hiring or promotion quotas, however, involves something quite different. Black individuals who receive preference under a quota system are not necessarily the same individuals as those who may have been discriminatorily denied employment or advancement at some earlier time. Similarly, white individuals who are passed over for employment or advancement because of the operation of a quota system are not necessarily the beneficiaries of any prior favorable discriminatory conduct.

The use of a quota system to favor blacks discriminates against white individuals not because they have been beneficiaries of discrimination but solely because the color of their skin is *white;* similarly black individuals obtain preference under such a system not because they have been discriminated against, but only because the color of their skin is *black.* It thus appears that the use of quotas leads to the very evil which Title VII was intended to eradicate —discrimination on the basis of race or color. It results in the very antithesis of equal and non-discriminatory opportunity in employment.

V.

Private plaintiffs are also in error when they challenge Edison's statement that only certain employees were "locked in" to so-called "low opportunity" jobs. (Pl. Br. p. 11, fn. 7). On their face, the District Court's findings establish that black employees were employed in high-opportunity jobs (see, *e.g.,* Findings 18, 21-23); and the District Court itself specifically limited the employee segment of the affected class to those who were "regular employees in the job classifications referred to . . . as low opportunity jobs". (Petition, Appendix B, p. 67a, Para. 2).

VI.

Private plaintiffs suggest, however, that no harm will come to Edison if the Court of Appeals' expansion of the "affected class" to "*all* black Edison employees" is allowed to stand. (Pl. Br. p. 11) (emphasis added). As demonstrated in our Petition, however, the effect of expanding the class will be to give to each and every black employee, regardless of discrimination, an opportunity to petition for back pay under conditions which often make it impossible for Edison to defend itself. (See Petition, pp. 17-18).

VII.

Private plaintiffs and Edison are in agreement that this Court should review the determination of the Court of Appeals concerning the applicable test for determining back pay. (See Petition, p. 3, Question 4). Inextricably intertwined with that issue is the question of the composition of the class to whom the opportunity to make the requisite showing is to be afforded. This involves not only the issue of expansion of the employee segment of the affected class from those who had been assigned to "low-opportunity jobs" to "all black employees" (*Id.*, Question 2), but also the issue of whether the class can properly include those who would be barred from now asserting their own claims, as well as rejected applicants (*Id.*, Questions 3 and 5). If certiorari should be granted as to any one of these four questions, they should be granted as to all.

The fifth question, *i.e.*, the issue of quotas (*Id.*, Question 1), is separate and distinct from the remaining four questions, but that issue, as we endeavor to demonstrate in our Petition, presents an issue of critical importance under our Constitution and in the administration of Title VII. Certiorari should therefore be granted as to that question also.

CONCLUSION

For each of the reasons assigned, Edison's Petition for Certiorari should be granted.

Respectfully submitted,

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